



THE CITY OF SAN DIEGO

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SAN DIEGO  
COUNTY GRAND JURY

July 17, 2000

Hon. Wayne L. Peterson  
Presiding Judge, San Diego County Superior Court  
220 W. Broadway, Department SD-P  
San Diego, CA 92101

Dear Judge Peterson:

Subject: Response to San Diego County Grand Jury Report,

In compliance with California Penal Code §933.05, the City of San Diego has extensively reviewed the April 18, 2000 report from the San Diego County Grand Jury entitled "Mission Bay Park - The Truth About `False Bay.'" Responses are enclosed for all findings and recommendations contained in the report and are consistent with the requirements and instructions of enclosed California Penal Code §933.05

The City appreciates the efforts put forth by the Grand Jury in researching the management and operation of Mission Bay Park. A number of the recommendations have already been or will be implemented, and there is agreement on some of the findings. However, we have a different view of some of the entries in the "Facts" section of the document that served as a basis for the Grand Jury's findings and recommendations. Those differences are noted in the responses to the findings and recommendations.

Overall, we believe Mission Bay Park is a well-managed, recreational resource operated by the City of San Diego and enjoyed by over 15 million visitors each year. The Park and Recreation, Planning and Development Review, and Real Estate Assets Departments have primary responsibility for the management operation and development of the park. Each of these departments reports directly to the Assistant City Manager. A Management Assistant appointed by the City Manager is specifically tasked with coordinating the activities of these departments and others with responsibilities in the park, including the Water, Wastewater, Police, Fire, and Transportation Departments. The Management Assistant reports directly to the Assistant City Manager.

Between 66 and 118 employees work in Mission Bay Park on any given day, complemented by volunteers from several different volunteer programs. The park's revenues and expenditures are conscientiously reported to all appropriate agencies for all tideland properties held in trust by the



Page 2

Hon. Wayne L. Peterson

July 17, 2000

City. Mission Bay water quality continues to improve, thanks to substantial investment in infrastructure and efforts by City staff and the public. The City remains in full compliance with City Charter restriction on development in Mission Bay, and all leases are managed responsibly for the benefit of citizens and tourists alike.

Several of the suggestions in the Grand Jury report will assist the City to continually look for ways to improve operations and ensure efficient management of Mission Bay Park.

Sincerely,

Michael T. Uberuaga  
City Manager

MU/TR/lr

## REQUIREMENTS AND INSTRUCTIONS

The California Penal Code ' 933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. *Such comment shall be no later than 90 days after the grand jury submits its report to the public agency.* Also, every ELECTED county officer or agency head for which the Grand Jury has responsibility shall comment on the findings and recommendations pertaining to matters under the control of that county officer or agency head, as well as any agency or agencies which that officer or agency head supervises or controls. *Such comments shall be made within 60 days to the Presiding Judge of the Superior Court with an information copy sent to the Board of Supervisors.*

Furthermore, California Penal Code ' 933.05(a), (b), (c) details, as follows, the manner in which such comment (are) to be made:

- (1) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:
  - (1) The respondent agrees with the finding.
  - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that disputed and shall include an explanation of the reasons therefor.
- (2) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:
  - (1) The recommendation has been implemented, with a summary regarding the implemented action.
  - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
  - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of the publication of the Grand Jury report.
  - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (3) If a finding or recommendation of the Grand Jury addresses budgetary or

personnel matters of a county agency or department headed by an elected officer both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code '933.05 are required from the:

CITY MANAGER, CITY of SAN DIEGO

RECOMMENDATIONS: 00-5 through 00-

## **CITY OF SAN DIEGO RESPONSE TO GRAND JURY REPORT**

### **MISSION BAY PARK - THE TRUTH ABOUT FALSE BAY**

Pursuant to Penal Code section 933.05, the City of San Diego provides the following responses to the above entitled Grand Jury Report.

#### **FINDINGS:**

- 1. There is only limited coordination between the various City departments responsible for the management, operation, maintenance, and development of the park.**

The Respondent disagrees with this finding. The Departments that are responsible for the management, operation, maintenance, and development of Mission Bay Park are well coordinated. The Park and Recreation, Planning and Development Review, and Real Estate Assets Departments are primarily responsible for the management, operation, maintenance, and development of the Park. Each of these Departments is part of the City's Neighborhood Services, Planning and Development Business Center.

The Department Directors for these Departments all report to the Assistant City Manager who also serves as the Business Center Manager. Issues among these departments, as well as other City Departments such as Water, Metropolitan Wastewater, Transportation, Police, and Fire, that require coordination are handled by the Management Assistant to the City Manager for Mission Bay Park. The Management Assistant also reports directly to the Assistant City Manager. The Assistant City Manager is responsible for all decisions pertaining to unresolved interdepartmental issues. The Management Assistant provides input and recommendations regarding each issue or problem to the Assistant City Manager.

- 2. No single City department or official is responsible for coordinating or evaluating studies of water quality in Mission Bay to determine causes of water contamination.**

The Respondent disagrees partially with this finding. Water quality monitoring in Mission Bay is addressed on a case-by-case basis. Depending on the situation presented, water quality monitoring needs can be addressed by a single official in the Manager's office or by a particular City department. For example, the City's Transportation Department, which directs the Storm Water Pollution Prevention Program, is responsible for responding to urban runoff issues. Additionally, potential impacts on Mission Bay from the South Shores landfill are addressed by the Environmental Services Department, which is responsible for landfill operations. Finally, potential impacts of sewage spills are evaluated by the Metropolitan Wastewater Department's Ocean Monitoring Program.

- 3. No single City department or official is responsible for recommending corrective action concerning water quality.**

The Respondent disagrees partially with this finding. Although no single department or official bears the sole responsibility for recommending all corrective action concerning water quality throughout Mission Bay, corrective actions are addressed and coordinated

by the appropriate City officials and/or City Departments on a case-by-case basis. For example, the City has addressed the overall water quality needs of Mission Bay by implementing the dry weather storm drain interceptor system. This system and the subsequent monitoring of the storm drains is handled in a cooperative manner by the Transportation and Metropolitan Wastewater Departments.

**4. Poor water circulation in the Bay increases the potential of beach closings.**

The Respondent is not presently in a position to agree or disagree with this finding. A lengthy comprehensive study of Mission Bay circulation conditions as they presently relate to the potential of beach closings under existing regulations would be required to substantiate this finding.

**5. Poor water circulation in the Bay increases the duration of beach closings.**

The Respondent is not presently in a position to agree or disagree with this finding. A lengthy comprehensive study of Mission Bay circulation conditions as they presently relate to increasing the duration of beach closings under existing regulations would be required to substantiate this finding.

**6. DNA testing and studies have not been used to determine sources of pollution in Mission Bay although such studies have been used elsewhere along the San Diego coastline and in Santa Monica Bay.**

The Respondent disagrees partially with this finding. The City has recently undertaken DNA testing at several locations of urban runoff to the ocean. However, while DNA testing can be useful in fingerprinting the likely sources of bacterial pollution, it does not identify the actual origin of that pollution.

**7. The duties of the 15 full time Mission Bay Park employees do not include patrolling the park for polluters.**

The Respondent disagrees wholly with this finding. First, identifying and arresting polluters in Mission Bay is included in the duties of the lifeguards, police, and park rangers. Several successful prosecutions have occurred as a result. Second, the number of full time Mission Bay employees is significantly greater than 15. The total number of City employees regularly assigned to Mission Bay Park each day varies from a total of 66 to 118, depending on the season and on the day of the week. This number includes 8 -18 lifeguards, 1-6 police officers, 1- 4 park rangers, 56-76 park maintenance personnel, and 14 administrative personnel.

**8. There is no volunteer program in Mission Bay Park.**

The Respondent disagrees wholly with this finding. While there is no single, formalized volunteer program in Mission Bay Park, a variety of volunteer efforts are currently employed. For example, the Police Department utilizes auxiliary police officers during peak periods to augment their patrols of Mission Bay Park. The Police Department also enlists the aid of the Retired Senior Volunteer Patrol (RSVP) to disseminate information to the public on Mission Bay. This group has grown to 28 RSVP members who assist with boating safety information booths at launch ramps and community events, conduct dock

walks to check vessels for compliance with regulations, and who can report cases of pollution to enforcement officers. Further, the Coast Guard Auxiliary staffs launch ramps and safety fairs, providing courtesy inspections and distributing literature. Information distributed via these various means includes pamphlets such as the ABC's of California Boating which, in addition to various boating safety topics, includes information on water quality issues and environmental protection measures that can be taken by boaters. Free Mission Bay maps with the locations of pump-out facilities are also distributed, as are Coast Guard publications regarding proper disposal of marine waste.

Additionally, Park maintenance staff coordinates with numerous volunteers, both groups and individuals, who regularly pick up litter throughout Mission Bay Park, items which could end up in the Bay if not picked up by park employees or volunteers. These supplemental efforts by volunteers increase the cleanliness of the Park and the Bay. For example, between July, 1999 and April, 2000, 18 groups, each comprised of 6 to 140 people, volunteered 1 to 3 times each, for 1 to 8 hours per person per event, picking up litter in Mission Bay Park, for a total combined work effort of 2,941 work hours.

**9. There is limited access to the three pump-out stations used to accommodate boats and campers.**

The Respondent disagrees partially with this finding. The three pump-out stations for vessels provide reasonable access to the public. The pump-out stations are open seven days a week. The station at Marina Village is open from 8:30 a.m. to 5:00 p.m., the station at the Hyatt Islandia is open from 6:00 a.m. to 6:00 p.m., and the station at Sea World is open from 9:00 a.m. to 5:00 p.m.

Additionally, campers are served by two public recreational vehicle dump stations. These stations, which are available 24 hours a day, seven days a week, are located at the Visitor Information Center near Interstate 5 and Clairemont Drive, and at the South Shores Boat Launching Facility, near South Shores Road and Sea World Drive.

**10. There are no pump-out stations that afford free access to the public.**

The respondent disagrees partially with this finding. The fee for using the three currently existing vessel pump-out stations ranges from \$4 to \$5 for the general public. The fee for marina tenants ranges from zero to \$1. These fees are reasonable for privately owned pump-out stations. The City will be providing, however, a fourth vessel pump-out station which has been funded and is expected to be operational by late 2000 or early 2001. There will be no charge for the use of this station. Further, no fee is required to use either of the public recreational vehicle dump stations.

**11. Sea World was not in compliance with State Water Quality Board standards for wastewater discharge into Mission Bay during five months of 1999.**

The Respondent agrees with this finding. Based on discussions with the San Diego Regional Water Quality Control Board (RWQCB) and Sea World's Environmental Department staff, there was noncompliance during the summer of 1999. The RWQCB determined that the violations were not of such a magnitude or frequency to warrant formal enforcement actions. In addition, the City has been informed that Sea World is currently considered in compliance with their discharge standards for aquaria wastewater

and no compliance actions are pending against them.

**12. The restoration of marshland would aid water quality improvement.**

The respondent disagrees partially with this finding. In order for marshland to aid water quality, the restored marshland must be designed as a pollutant filtration marsh. According to the Mission Bay Park Master Plan Update: the ability of a tidal marsh to capture and filter pollutants is substantial, however, several variables affect performance, such as size and configuration of the marsh, tidal levels, magnitude of flood events, >first flush pollutant loading and the efficiency of the retention system.

**13. The City initiated a request for studies of the potential creation of marshes at Tecolote and Cudahy Creeks.**

The Respondent agrees with this finding. The studies, however, are actually design and permitting of the filtration marshes at Tecolote and Cudahy Creeks.

**14. The City formed an ad hoc committee to consult on water quality.**

The Respondent disagrees wholly with this finding. The Ad Hoc Natural Resources Subcommittee of the Mission Bay Park Committee was not formed to consult on general water quality issues. Instead, it was formed to submit recommendations to the City regarding the expenditure of \$417,000 in Sludge Mitigation Funds for the enhancement of Mission Bay water quality and natural resource areas.

Following is an excerpt from the November 18, 1999 announcement distributed to recruit volunteers to serve on the Ad Hoc Natural Resources Subcommittee:

In October, the California Coastal Commission, with consensus support of the Mission Bay Park Committee, approved use of \$417,000 for the enhancement of Mission Bay water quality and natural resource areas.

In an effort to move forward on this program, the Mission Bay park Committee Chairperson has authorized an Ad Hoc Subcommittee on Natural Resources to look at the best ways to utilize these funds. The subcommittee will be composed of 3-4 members of the Mission Bay Park Committee and 6-8 interested citizens, with a maximum of 12 members.

**15. The lessee of Campland is agreeable to negotiations for early termination of the lease to facilitate marshland restoration.**

The Respondent disagrees wholly with this finding. The lessee of Campland has recently informed the City that it has no desire to pursue early termination of the Campland lease.

**16. The City of San Diego is not considering the early termination of the Campland lease.**



The Respondent agrees with this finding. The Campland lease does not expire until 2017. Early termination of the lease would eliminate a critical and affordable visitor-serving camping facility. Further, early termination would result in revenue losses in the amount of approximately \$1 million per year, and could result in the City compensating the lessee for the loss of its leasehold interest. These factors, together with the fact that there is no demonstrable evidence that a marshland in this area would be viable, illustrate that it would be fiscally unwise for the City to terminate the Campland lease.

**17. The State Lands Commission requires the City of San Diego to report annually all income and expenditures generated on tidelands properties.**

The Respondent disagrees partially with this finding. The City concurs that income and expenditures related to granted tidelands should be reported. However, there are certain exceptions that are not subject to reporting requirements. These exceptions include, but are not limited to, the following: sales tax, Transient Occupancy Tax (TOT), and property taxes. The City will be, in the future, reporting minor revenues such as park permits and fees.

**18. The State Lands Commission does not have staff to help cities with their reporting process or auditors to verify report accuracy.**

The Respondent is not in a position to agree or disagree with this finding. The City has no knowledge as to whether the State Lands Commission has auditors to verify report accuracy. It would be more appropriate to direct findings regarding the appropriate level of staffing at the State Lands Commission directly to the Commission. State Lands Commission staff has consistently been available to City staff for questions regarding the reporting process.

**19. The City has allowed the use of trust lands in ways not allowed by the trust.**

The Respondent disagrees partially with this finding. First, to the extent it eventually became a residential use, the mobilehome park use at De Anza was inconsistent with the applicable state land grant. When the City took steps to correct this inconsistency, however, in 1982 the State of California enacted the Kapiloff bill, State Assembly Bill No. 447, which provided that the continued residential use of De Anza would be deemed consistent with the trust until November 23, 2003.

Secondly, with respect to the sludge drying operation, formerly located on Fiesta Island, in the late 1960's Mission Bay Park was still being formed and sludge was being used as fill material to construct many of the upland areas of the park, including portions of Fiesta Island. For this reason, the State Lands Commission agreed that the sludge beds could be temporarily sited on Fiesta Island to facilitate park construction, but with the stipulations that they could not remain there on a permanent basis.

Population growth in the San Diego area soon dictated that additional sludge drying capacity was needed. In 1981, the Coastal Commission approved the expansion of the existing sludge drying facility with the special condition that the entire operation be relocated within six years, which would have been January 1987.

In December 1986, the Coastal Commission granted the City a one-year extension for the relocation of the sludge drying facilities. Subsequent extensions were granted and in 1989, the Coastal Commission granted the City another extension and they also imposed a special condition requiring the City to establish a mitigation fund. Funds were transferred from the Sewer Revenue Fund to a Mission Bay mitigation fund to be used to fund resource protection, public access and public recreational improvements within Mission Bay Park. Funds were transferred on an annual basis for each year that the sludge beds remained on Fiesta Island. By 1998, all sludge processing operations were relocated and the site was restored and returned to the Park and Recreation Department.

**20. Only lease revenues from commercial entities located on tidelands in Mission Bay Park are reported to the State Lands Commission.**

The Respondent disagrees wholly with this finding. The Grand Jury Report does not contain any specific examples of lease revenues that are not reported to the State Lands Commission to support this finding. The City has reported all appropriate revenues from all leases, both commercial and nonprofit, located within state granted tidelands to the State Lands Commission.

**21. All revenues should be reported to the State Lands Commission.**

The Respondent disagrees with this finding. All revenues are not required to be reported to the State Lands Commission. Revenues are reported to the State Lands Commission to the extent that they are appropriate. As stated in the response to Finding 17, certain revenues are exempted from reporting requirements, such as sales tax, TOT, and property taxes. The City has been reporting all readily identifiable revenue, such as lease revenues, totaling approximately \$16M per year, and excludes other revenues such as grant and sludge mitigation revenues and their corresponding expenditures. Other minor revenues, such as fees and permit charges, were not included in previous years, but will be included in future reports.

**22. The City does not keep accurate accounts of expenditures for tidelands properties.**

The Respondent disagrees partially with this finding. The complicated nature of the boundaries of City and tideland areas has required the City to keep a combination of direct and allocable expenditures. The City acknowledges that tracking of expenditures could be improved. However, it should be noted that due to the conservative tracking of expenditures, the City has actually been understating the carryover of expenditures.

**23. The City cannot receive credit to the General Fund for expenditures on tidelands without a clear expression of intent for reimbursement noted in the Budget Ordinance.**

The Respondent disagrees wholly with this finding. A clear expression of intent is not required to receive credit to the General Fund for expenditures on tidelands. In addition, the City does not concur with the State Lands Commission letter of May 1977 that prior expenditures are a gift of the City and, therefore, cannot be claimed as credits.

**24. The City previously added past expenditures that had not been noted in a Budget Ordinance.**

The Respondent agrees with this finding. However, as explained in the response to Finding 23, it was entirely appropriate for the City to have previously added past expenditures that had not been noted in a Budget Ordinance at the time of the expenditures. The City does not agree that an expression of intent is required. Similarly, the City does not agree with the State Lands Commission letter of May 1977 that prior expenditures are a gift of the City and, therefore, cannot be claimed as credits.

**25. Some expenditures reported as part of the tidelands expenses are actually expenditures from tidelands and uplands outside of Mission Bay Park.**

The Respondent disagrees wholly with this finding. The Grand Jury Report does not include any examples of tidelands expenses that are actually expenditures from tidelands and uplands outside of Mission Bay Park to support this finding. Staff review of City records has disclosed no such reported expenditures.

**26. The City has not reported income and expenditures from Mission Bay Park to The State Parks and Recreation Department since 1985.**

The Respondent disagrees partially with this finding. Staff from the State Park and Recreation Department, Audit's Division contacted the City in February 2000 and requested the reports. The City immediately submitted the requested annual reports covering the period of 1985 through 1999 to the State Parks and Recreation Department. A letter was subsequently received from the State Parks and Recreation Department confirming their acceptance of the reports. This letter was provided to the County Auditor by staff during the course of the Grand Jury investigation.

**27. The State Parks and Recreation Department has agreed to accept the reports for 1985-1999 submitted by the City to the State Lands Commission, even though these reports do not fully comply with the reporting requirement.**

The Respondent disagrees partially with this finding. The City is in compliance with all reporting requirements. Following submission of the 1985 to 1999 reports to the State Park and Recreation Department, the City received a letter from the State Auditor with the State Park and Recreation Department, stating It appears that the report provided to the State Lands Commission is adequate to meet the annual financial statement requirements under our agreement. There is no mention in this letter that these reports did not fully comply with the reporting requirements. This letter was provided to the County Auditor by staff during the course of the Grand Jury investigation.

- 28. The City has not had a survey to determine land and water acreage of Mission Bay Park nor of leased areas since passage of City Charter Amendment 55.1 in 1987.**

The Respondent disagrees partially with this finding. While the City has not conducted a single, comprehensive acreage survey of all of Mission Bay Park, a number of areas within the Park have been accurately surveyed for acreage since 1987.

- 29. The City relies on a 1968 aerial survey, which has missing calculations, to determine total area of Mission Bay Park.**

The Respondent agrees with this finding. The City currently relies on a 1968 aerial survey to determine the total area of Mission Bay Park. The total area was determined by City staff using a planimeter and 200 scale aerials. Three staff members performed three different calculations to arrive at a consistent figure. While some of the acreage calculations for subareas of the Park are missing, the results of those calculations are comparable to other subarea for which all calculations are available. It should be noted that a comprehensive survey of Mission Bay Park is scheduled to be completed by early September 2000.

- 30. The City relies on lessees to provide information on the amount of land included in their lease agreements.**

The Respondent partially disagrees with this finding. The lessees are required to obtain updated legal descriptions with lease renewals; however, the legals and plat maps are all verified by City staff before they become part of the lease agreement. By requiring that the lessee's have the updated legals and plats prepared, the City does not bear any of the cost.

- 31. In some leases the information on the amount of land is missing or incomplete.**

The Respondent agrees with this finding. Some of the older lease agreements may not include a plat map, or may not include the exact amount of acreage leased. When leases are renewed, new legals and plats are prepared. The survey of Mission Bay Park scheduled for completion in September 2000, will include surveys of all the leased properties.

- 32. The City recently advertised for firms qualified to perform a metes and bounds survey.**

The Respondent agrees with this finding. In the performance of the record of survey the consultant will conduct a retracement of the boundary of Mission Bay Park that will allow the creation of a metes and bounds legal description of Mission Bay Park and the leaseholds within Mission Bay Park. This survey is scheduled to be completed by early September 2000.

- 33. The City does not intend that the survey identify marshland.**

The Respondent agrees with this finding. The purpose of the survey is to calculate the area of land and water for the purpose of complying with Charter section 55.1.

- 34. City Charter Section 55.1 limits leases to 25 percent land/6.5 percent water total**

**leased areas.**

The Respondent disagrees wholly with this finding. City Charter Section 55.1 limits commercial leases to 25% of land and 6.5% of water.

- 35. The title of City Charter Section 55.1 refers to "commercial development" and the text refers to "all leases," creating ambiguity.**

The Respondent disagrees wholly with this finding. Under the pertinent rules of statutory interpretation, Charter Section 55.1 clearly restricts only commercial leases.

- 36. The NR&C Committee of the City Council requested clarification from City staff on City Charter Section 55.1 ambiguities.**

The Respondent partially disagrees with this finding. At its November 3, 1999 meeting, the Natural Resources & Culture Committee requested that the City Attorney's office determine the intent of voters when they passed Charter Section 55.1. On May 5, 2000, the City Attorney's office issued a report to the committee confirming that Charter Section 55.1 applies only to commercial leases.

- 37. City Policy 700-08 states that beach areas of Mission Bay Park shall remain open and accessible to the general public at all times. Leases are required to adhere to this criteria.**

The Respondent agrees with the finding, with the note that City Council adopts these policies by Council Resolution, not as part of the Municipal Code, and by Council Resolution can deviate from its policies on a case-by-case basis.

- 38. At least one lease does not adhere to City Policy 700-08 concerning beach areas being open and accessible to the general public at all times.**

The Respondent disagrees wholly with this finding. The public has access to all of the beach areas in Mission Bay. Further, the Grand Jury report fails to state which lease does not adhere to Council Policy 700-08 to support this finding.

- 39. The City would be in violation of the 25 percent limit allowed by City Charter if all MBP areas with limited public access are considered.**

The Respondent disagrees wholly with this finding. San Diego City Charter Section 55.1 restricts commercial land leases in Mission Bay Park to 25% of the total land acreage. Based upon existing survey information, the commercial lease acreage is clearly within the 25 percent limit imposed by the City Charter.

- 40. The Boy Scouts lease is not included in the READ list of lessees.**

The Respondent partially disagrees with this finding. While the Grand Jury Report does not provide an example of any specific list of lessees that does not include the Boy Scout

lease acreage, the Manager's Report to the Natural Resources and Culture Committee meeting of November 3, 1999 inadvertently omitted this lease. This list has subsequently been corrected. All computer generated lists of Mission Bay Park leases have included the Boy Scout lease acreage.

**41. There is inconsistent reporting as to whether the Dusty Rhodes Park portion of Mission Bay Park is included in total Park acreage.**

The Respondent disagrees wholly with this finding. Dusty Rhodes Park is included in dedicated Mission Bay Park and the acreage is included as part of the total park acreage. The Grand Jury Report does not provide an example of inconsistent reporting, therefore, there is insufficient information for the City to respond to any specific circumstance of inconsistent reporting.

**42. Commercial leased area in the Park has increased since the Master Plan Update six years ago.**

The Respondent agrees with this finding. In 1997, the Sea World leased area was increased to include the 16.5 acre parcel located adjacent to Sea World. The leased area was also increased to include 7 acres of Perez Cove Way. This expansion was consistent with the Mission Bay Park Master Plan Update. The Master Plan Update provides for leasehold expansions for other leases as well.

**43. Uncompleted projects proposed in the Master Plan Update total over \$160 million.**

The Respondent agrees with the finding, given the impact of six years' inflation on the cost estimates. However, it should be noted that three of the Master Plan's large project categories have been completed and another eight are in design or partially completed.

Large project categories that have been completed include dredging East Ski Island, expanding the least tern area at North Fiesta Island and lighting parking lots.

The eight project categories in process or partially complete include: 1) expansion of the Northern Wildlife Preserve by seven acres at the north end of Crown Point Shores; 2) replacement of several restroom facilities; 3) construction of the south Crown Point Shores pathway; 4) construction of that portion of the South Shores park road serving the boat launch facility; 5) planting of some of the coastal landscaping on the north side of Sea World Drive in South Shores; 6) initiation of design for the filtration marshes at the mouths of Tecolote and Cudahy Creeks; 7) identification of funding for the design of the Nature Center; and 8) completion of some "General Rehabilitation" projects.

**44. No funds have been allocated directly from park revenue surplus to fund the uncompleted projects in the Mission Bay Park Master Plan Update.**

The Respondent disagrees wholly with this finding. There is no park revenue surplus funding currently associated with Mission Bay Park. In addition, more than \$1.2 million of General Fund monies have been spent toward development identified in the Master Plan for South Shores.

**45. City management takes the position that all income generated by Mission Bay Park**

**should be included in the General Fund.**

The Respondent agrees with this finding. Currently, the City Manager does not have discretion as to whether or not income from Mission Bay Park is placed into the General Fund. The City Manager has consistently recommended against earmarking future non-enterprise fund revenues. Increasing the percentage of discretionary funds that are to be designated for specific projects imposes a restriction on the Mayor and City Council, limiting their discretion in annual budget discussions prioritizing expenditures based upon current and anticipated needs. In order for the City Manager to apply Mission Bay Park revenue to non-General Fund expenditures, there must be specific authority in either the City Charter or Municipal Code that directs the City Manager to make such expenditures.

**46. No TOT funds are currently allocated directly to Mission Bay Park.**

The Respondent disagrees wholly with this finding. While no new TOT funds have been allocated in the FY 2000 budget for specific Mission Bay Park projects, TOT funds are currently used to fund the debt service requirements of previously issued Certificates of Participation that were used to make substantial improvements in Mission Bay Park.

## **RECOMMENDATIONS**

**00-5: That the City Manager establish and staff a position to coordinate, manage and oversee daily operation and future planning for Mission Bay Park.**

This recommendation will not be implemented because it is not warranted. A Management Assistant to the City Manager for Mission Bay Park was appointed in April 1999. This position coordinates all interdepartmental issues relating to Mission Bay Park. A Mission Bay Park Manager is responsible for the daily operation of Mission Bay Park. This position reports to Park and Recreation Department management. The various Departments responsible for operation, management, and planning of Mission Bay Park are all part of the City's Neighborhood Services, Planning and Development Business Center. The Directors of these Departments report directly to the Assistant City Manager. The Assistant City Manager is responsible for all decisions pertaining to unresolved issues between Departments involving Mission Bay Park and receives input and recommendations from the Management Assistant to the City Manager for Mission Bay Park regarding each issue or problem.

**00-6: That the City Manager designate an environmental impact manager for Mission Bay Park.**

This recommendation will not be implemented because it is not warranted. The addition of this position appears redundant in that the Management Assistant to the City Manager for Mission Bay Park is capable of providing any coordination between the City departments that is required to address Mission Bay water quality issues.

- 00-7: That the duties of the designated environmental impact manager include supervision of the collection and analysis of water quality data, including DNA testing to determine the sources of pollutants in the Bay, and implementation of corrective action.**

The recommendation will not be implemented because it is not warranted. Existing City Departments with expertise in sampling and analysis currently perform these duties. For example, a program conducted by the City's Metropolitan Wastewater Department has focused on storm drain locations where sewage spills can impact water quality.

DNA testing is a research technique that is very expensive to conduct and is not an appropriate tool for use in routine water quality monitoring. DNA testing typically runs between \$20,000 and \$30,000 per location per sampling event. The City has recently begun an investigation that utilized DNA testing to identify the specific source of bacteria finding its way into select storm drains entering the ocean. A follow-up survey is now underway to attempt to identify the human component of this contamination. Methods to accomplish this are being developed as part of the program. Expansion of this work should not be attempted until method development is complete.

- 00-8: That the City Manager develop a plan to improve water circulation in Mission Bay which includes a timetable for implementation.**

The recommendation will not be implemented as stated, because improving Mission Bay's water circulation has been extensively studied and potential actions would result in either marginal improvement or relocation of areas prone to contamination. Further studies would be required and sufficient funding would need to be identified before a comprehensive plan could be developed and implemented that would have sufficient potential to improve water quality via changing water circulation patterns in Mission Bay.

- 00-9: That the City Manager initiate a volunteer service to assist in patrolling the Bay for potential polluters.**

The recommendation will not be implemented because it is not warranted. There is a lack of evidence that boats are a significant source of contamination or contributing to contamination in a way that could be observed and addressed by additional patrols. Current efforts by lifeguards and police have led to successful prosecutions where there has been discovery of criminal activity that has occurred which resulted in pollution of Mission Bay waters.

- 00-10: That the City Manager provide additional free pump out stations in Mission Bay for both boaters and campers.**

The recommendation has not yet been implemented, but will be implemented with the pending installation of one free station for boaters by late 2000 or early 2001. This 24-hour pump-out facility is planned for installation in Quivira Basin at the public dock on Hospitality Point. There are no plans at this time for additional facilities for recreational-vehicle users.

- 00-11: That the City Manager provide additional collection sites for water monitoring at Sea World's two treated water discharge outfalls, to test for bacterial indicators and for**



## **DNA.**

This recommendation will not be implemented because it is not warranted and is unreasonable. Permitted water quality monitoring is under the control of the San Diego Regional Water Quality Control Board (RWQCB). A water quality monitoring program associated with the Sea World discharge is required under a National Pollutant Discharge Elimination System (NPDES) permit issued to Sea World by the RWQCB. The elements of, and compliance with, this monitoring program are designed and regulated by RWQCB staff.

In addition, DNA testing is not an appropriate monitoring tool, but rather, a research technique. Whereas it can be useful in fingerprinting the likely sources of bacterial pollution, it does not identify the actual origin of that pollution. In addition, DNA testing typically runs between \$20,000 and \$30,000 per location per sampling event. It is not an appropriate technique for use in routine water quality monitoring and, therefore, is not currently included by the RWQCB in NPDES discharge permits. No additional compliance information would be gained by obtaining DNA test results and incurring the substantial costs associated with the testing procedure.

### **00-12: That the City Manager implement the recommendations of the Cudahy and Tecolote Creek marsh restoration project studies.**

This recommendation cannot presently be implemented but will be implemented in the future. The pollutant-filtration marsh designs currently in-process are estimated to be completed in mid-2001. The environmental review and permits should be obtained in early 2003 and water quality improvement grant funding will be sought. If funding sources become available by early 2003, marsh construction should begin in 2003-2005.

### **00-13: That the City Manager include in the negotiations for the redevelopment of the De Anza Estates property the return of land now used as Campland for the creation of marshlands.**

This recommendation will not be implemented. It is not warranted because there is no demonstrable evidence that a pollutant-filtration marsh would be viable in this area. It is unreasonable because terminating the lease early would eliminate a critical and affordable visitor-serving camping facility and would result in revenue losses for the City in the amount of approximately \$1 million per year.

### **00-14: That the City Manager establish a schedule to routinely review uses of Mission Bay Park to allow only trust approved uses for the trust lands of the park.**

This recommendation has been implemented. It has been an existing practice for all leaseholds in Mission Bay. The City has, for many years, routinely reviewed the uses at Mission Bay Park and approves only those uses consistent with the applicable grants as well as park and recreation purposes. Annual inspections are conducted of all Mission Bay Park leaseholds and this requirement is part of the standard lease language. Each year the leases are inspected for consistency with the use provisions of the lease agreement and maintenance of the facilities. In addition, the City will enter into only those leases which are consistent with dedicated park uses and the tidelands trust. The City Manager routinely reviews uses of Mission Bay Park, whenever a new or changed use is proposed or occurs, to allow only trust-approved uses for the trust lands of the park.

**00-15: That the City Manager meet with the State Lands Commission to verify appropriate reporting procedures.**

This recommendation will be implemented. A meeting with the appropriate staff from the City Auditor's and Park and Recreation Departments and the State Lands Commission is scheduled to take place in July 2000.

**00-16: That the City Manager report only income and expenditures generated within Mission Bay Park tidelands and adjacent tidelands to the State Lands Commission beginning with the year 2000 report, and amend prior incorrect reports.**

This recommendation will be implemented. The City will continue to report all appropriate state granted land income and expenditures to the State Lands Commission. All appropriate corrections to prior years' reports will be included in the report for the year 2000.

**00-17: That the City Manager include all income from sources other than leases such as special event fees, grants, and sludge fund monies in the report to the State Lands Commission.**

This recommendation will be implemented for all reportable income. However, grants and sludge fund monies will not be reported. As acknowledged on page 9 of the Grand Jury Report, AA grant received to accomplish a project on tidelands does not have to be reported as income as long as the project for which the grant is spent does not appear as an expense item.

**00-18: That the City Manager accurately report all Mission Bay income and expenditures to the State Parks and Recreation Department.**

This recommendation will be implemented. The City will consult with State Lands Commission and State Park and Recreation staff to verify the appropriate allocation of expenditures and accurately report all appropriate Mission Bay and Ocean Beach revenue and expenses to the State Parks and Recreation Department in accordance with the grant agreement.

**00-19: That the City Manager direct the completion of an accurate total land and water survey before any new development of leased land and water is approved to ensure compliance with the City Charter.**

This recommendation has already been implemented. As a result of a November 3, 1999 Natural Resources and Culture Committee referral, the City Manager directed staff to initiate a process to survey Mission Bay Park. A competitive selection process has resulted in the selection of Project Design Consultants to conduct this survey. The City Council authorized the City Manager to enter into a contract with Project Design Consultants on June 5, 2000. The survey is scheduled to be completed by early September 2000. However, staff will continue to process requests for new development and lease negotiations at the same time that the survey work is being processed. It is likely that the survey will be completed before any new development projects are ready for City Council review.

**00-20: That the City Manager require that the survey determine the extent of marshland in Mission Bay Park.**

This recommendation will not be implemented because it is not warranted and is unreasonable. A separate calculation of marsh in Mission Bay Park will not provide any relevant information for compliance with Charter Section 55.1. In accordance with standard surveying practices and California law, the mean high water mark will be used to distinguish land from water.

**00-21: That the City Manager determine the total land in the park without including marshland.**

This recommendation will not be implemented because it is not warranted and is unreasonable for the same reasons listed in the response to recommendation #00-20 above.

**00-22: That the City Manager include both commercial and non-commercial leases and agreements in the list of properties that are subject to the 25 percent land and 6.5 percent water limits in Mission Bay Park.**

Charter section 55.1 does not require this change, however, if adopted by City Council as policy direction it will be done.

**00-23: That the City Manager designate a source of funds in addition to the General Fund for timely completion of the major projects in the Mission Bay Master Plan Update.**

This recommendation will not be implemented because it is unreasonable and impractical. The City Manager is charged with proposing a budget annually to the Mayor and City Council and does not have the authority to dedicate a revenue stream. It has consistently been the recommendation of the City Manager to the Mayor and City Council that, in an effort to maintain fiduciary responsibility, earmarking of future revenues be minimized. Increasing the percentage of discretionary funds that are designated for specific projects imposes a restriction on the Mayor and City Council, limiting their discretion in prioritizing expenditures based upon current and anticipated needs. Funding for Mission Bay Park improvements have been, and will continue to be, considered during every budget process. As part of the budget process, the City Manager evaluates and prioritizes the revenues available and the expenditures required to operate the City. The City Manager's proposed budget is placed before the Mayor and City Council who have the ultimate authority over the final budget.

**00-24: That the City Manager explore the possibility of restoring support for Mission Bay Park from TOT funds.**

This recommendation has been, and will continue to be, implemented because it is considered during every budget process. As part of the budget process, the City Manager evaluates and prioritizes the revenues available and the expenditures required to operate the City. The City Manager's proposed budget is placed before the Mayor and City Council who have the ultimate authority over the final budget. TOT funds are currently used to fund the debt service requirements of previously issued Certificates of Participation that were used to make substantial improvements in Mission Bay Park.